

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

BELLWOOD CORP.,
GREENBRIER HOTEL CORP.,
GREENBRIER GOLF AND TENNIS CLUB
CORP.,
GREENBRIER MEDICAL INSTITUTE, LLC,
THE GREENBRIER SPORTING CLUB
DEVELOPMENT COMPANY, INC.,
THE GREENBRIER SPORTING CLUB, INC.,
JUSTICE FAMILY GROUP, LLC,
JAMES C. JUSTICE COMPANIES, INC.
JUSTICE FARMS OF NORTH CAROLINA,
LLC,
JUSTICE LOW SEAM MINING, INC.,
OAKHURST CLUB, LLC,
TAMS MANAGEMENT, INC.
TRIPLE J PROPERTIES LLC,
JAMES C. JUSTICE II,
CATHY L. JUSTICE, AND
JAMES C. JUSTICE III

Plaintiffs,

v.

CARTER BANK & TRUST,
MICHAEL R. BIRD,
KEVIN S. BLOOMFIELD,
ROBERT M. BOLTON,
ROBERT W. CONNER,
GREGORY W. FELDMANN,
CHESTER A. GALLIMORE,
CHARLES E. HALL,
JAMES W. HASKINS,
PHYLLIS Q. KARAVATAKIS,
LANNY A. KYLE,
E. WARREN MATTHEWS,
CATHARINE L. MIDKIFF,
JOSEPH E. PIGG,
ELIZABETH LESTER WALSH,
LITZ H. VAN DYKE, AND
JOHN AND JANE DOES.

Defendants.

Civil Action No: 5:21-cv-00320

**DECLARATION OF LITZ VAN DYKE IN SUPPORT OF
MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE,
TO TRANSFER VENUE TO THE WESTERN DISTRICT OF VIRGINIA**

I, Litz Van Dyke, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury on this 9th day of July 2021, that the following facts are true and correct:

1. I am a resident of the City of Martinsville, Virginia and over eighteen years of age.
2. I am the Chief Executive Officer of Carter Bank & Trust ("Carter Bank") and serve on the Board of Directors. I am authorized to make this Declaration on behalf of Carter Bank.
3. As a corporate representative of Carter Bank in this matter, I have first-hand knowledge of the matters set forth herein.
4. Carter Bank is a state-chartered banking institution incorporated in the Commonwealth of Virginia, with its principal place of business in Martinsville, Virginia. Carter Bank was founded by Worth Carter, who was a resident of the Commonwealth of Virginia before his death in April 2017. All documents relating to this case held by Carter Bank are located at its principal place of business. All decisions relating to the credit relationship between Plaintiffs and Carter Bank were made at its principal place of business.
5. Carter Bank has approximately sixty-nine (69) locations in Virginia and North Carolina. It does not have an office or any branch in West Virginia.
6. Carter Bank has had a long-standing commercial lending relationship with Plaintiffs James C. Justice, II ("Jim Justice"), Cathy L. Justice ("Cathy Justice") James C. Justice III ("Jay Justice") (collectively the "Justices") and the entities named as Plaintiffs in this case (the "Justice Entities").
7. At the end of 2016, Carter Bank had in excess of \$750 million in loans outstanding to the Justices and the Justice Entities.

8. Beginning approximately five years ago, Carter Bank began to seek to reduce its credit exposure to the Justice Entities and repeatedly informed the Justice Entities of its intent to do so. As a result of these efforts, by the end of 2020, Carter Bank had reduced its credit exposure with the Justice Entities to less than \$400 million.

9. During this approximately five-year period, Carter Bank worked repeatedly and cooperatively with the Justices and the Justice Entities in restructuring and/or extending various of the loans made to the Justice Entities, as well as occasionally advancing new credit.

10. In connection with these new loans, restructurings and extensions, the Justices and the Justice Entities executed various loan agreements, promissory notes, modifications to deeds of trust, security agreements, subordination agreements, guaranties, and other loan documents. All of the documents identified in this Declaration are listed and more particularly described on the index attached hereto as Exhibit 1.

11. In January 2017, Plaintiff Justice Low Seam Mining, Inc. ("JLSM") needed \$5 million in working capital and Carter Bank agreed to loan that sum. In connection with that loan, JLSM entered into a loan agreement. A true copy of the Loan Agreement is attached hereto as Exhibit 1.A.

12. On May 22, 2017, Carter Bank renewed an existing loan to Plaintiff Greenbrier Hotel Corporation ("Greenbrier Hotel") and advanced an additional \$5 million. As part of that transaction, various of the Justice Entities executed the following documents:

- a. Greenbrier Hotel Promissory Note;
- b. Loan Agreement;
- c. Greenbrier Hotel Security Agreement;
- d. Greenbrier Golf & Tennis Club Corporation Security Agreement;

- e. The Greenbrier Sporting Club Development Company, Inc. Security Agreement;
and
- f. Subordination Agreement.

True copies of the foregoing documents (the "May 2017 Loan Documents") are attached hereto as Exhibit 1.B.

13. On September 7, 2017, I attended a meeting with Plaintiff Jay Justice, Stephen W. Ball, Esq. ("Ball"), Paul E. Sullivan, Esq. ("Sullivan"), Phyllis Karavatakis (Carter Bank's then President), and Carter Bank's attorney to discuss a request made by Jay Justice for an additional loan and a deferral of payments due on loans to certain of the Justice Entities. The meeting took place in Martinsville, Virginia.

14. In the Fall of 2017, certain of the Justice Entities defaulted on loans made to them by Carter Bank. As a result of the default, the parties engaged in negotiations that resulted in the execution of a forbearance agreement, which subsequently was amended and restated twice in the immediately ensuing months (collectively the "Forbearance Agreements") pursuant to which Carter Bank agreed to forbear from exercising its rights under the notes, deeds of trust and security agreements evidencing and securing the loans that were in default. True copies of the Forbearance Agreements are attached hereto as Exhibit 1.C.

15. At the time of the meeting and the negotiation of the Forbearance Agreements, the Justice Entities and the Justices were represented not only by in-house counsel Ball, but also by the law firm of Frost, Brown & Todd, LLC a very large well-respected Kentucky based law firm. The specific attorney leading the representation of the Justices and the Justice Entities was Sullivan, a high-powered well-respected senior attorney. His law firm web page biography is attached hereto as Exhibit 2. His biography states that "Paul's practice is concentrated in mergers,

acquisitions and complex corporate transactions and litigation within the banking, and minerals extraction industries.” The Justices and the Justice Entities could not have been represented more professionally than they were at the time that the Forbearance Agreements were executed.

16. While the Forbearance Agreements described above were negotiated, the parties also were engaged in negotiations concerning an overall restructuring of many of the loans then outstanding to the Justice Entities. That restructuring resulted in the Justices and the Justice Entities, at the end of 2017 and in early 2018, executing a number of additional loan documents, including notes, security agreements, deeds of trust, loan agreements and other loan documents, as well as the Justices executing personal guaranties.

17. More specifically, on or about December 1, 2017, Carter Bank agreed to restructure certain debt of Greenbrier Hotel, Plaintiff Greenbrier Golf & Tennis Club (“Greenbrier Golf & Tennis”), Plaintiff Greenbrier Medical Institute, LLC (“Greenbrier Medical”), Plaintiff Justice Family Group, LLC (“Justice Family Group”) and related entities. In connection with this restructuring, various of the Justice Entities, Jim Justice and Cathy Justice executed the following documents:

- a. Greenbrier Hotel, Justice Family Group Amended and Restated Promissory Note;
- b. Guaranty (Jim Justice as guarantor);
- c. Guaranty (Cathy L. Justice as guarantor);
- d. Greenbrier Hotel, Greenbrier Medical, Greenbrier Golf & Tennis, Justice Family Group Security Agreement;
- e. Greenbrier Golf & Tennis Amended and Restated Promissory Note;
- f. Guaranty (Greenbrier Hotel, Greenbrier Medical, The Greenbrier Sporting Club, Inc. (“Greenbrier Sporting Club”), Justice Family Group, Oakhurst Club, LLC (“Oakhurst”) as guarantors);
- g. Greenbrier Medical Amended and Restated Promissory Note.

True copies of the foregoing documents ("December 1, 2017 Loan Documents") are attached as Exhibit 1.D.

18. Also, on or about December 15, 2017, Carter Bank agreed to restructure certain debt of Plaintiff James C. Justice Companies, Inc. ("JCJC.") In connection with the restructuring transaction, certain of the Justice Entities and the Justices executed the following documents:

- a. JCJC Amended and Restated Promissory Note;
- b. Guaranty (Jim Justice as guarantor);
- c. Guaranty (Cathy Justice as guarantor);
- d. Guaranty (JLSM as guarantor); and
- e. JCJC Loan Agreement.

True copies of the foregoing loan documents ("December 15, 2017 Loan Documents") are attached as Exhibit 1.E.

19. On or about January 1, 2018, Carter Bank agreed to restructure certain JLSM loans, as well as loans made to Plaintiff Bellwood Corporation ("Bellwood"). In connection with the restructuring of these loans, certain Justice Entities and certain of the Justices executed the following loan documents:

- a. JLSM Amended and Restated Promissory Note;
- b. Guaranty (Jim Justice as guarantor);
- c. Guaranty (Cathy Justice as guarantor);
- d. JLSM Loan Agreement;
- e. JLSM Environmental Indemnity Agreement;
- f. Bellwood Corporation ("Bellwood") Amended and Restated Promissory Note;
- g. Guaranty (Jim Justice as guarantor);

- h. Guaranty (Cathy L. Justice as guarantor);
- i. Bellwood Loan Agreement; and
- j. Bellwood Environmental Indemnity Agreement.

True copies of the foregoing loan documents ("January 1, 2018 Loan Documents") are attached as Exhibit 1.F.

20. The Justice Entities and the Justices were at all times pertinent represented by in-house counsel Ball who reviewed and negotiated the December 1, 2017 Loan Documents, the December 15, 2017 Loan Documents, and the January 1, 2018 Loan Documents.

21. On March 19, 2018, Carter Bank renewed and extended a \$3,127,014 short-term loan to JLSM. To document that loan, JLSM entered into a loan agreement and promissory note, and Jay Justice executed a personal guaranty ("2018 JLSM Short-Term Loan Documents"). True copies of the 2018 Short-Term Loan Documents are attached hereto as Exhibit 1.G.

22. On April 30, 2018, Carter Bank renewed and extended the loan to Bellwood. True copies of the Amended and Restated Promissory Note executed by Bellwood ("2018 Bellwood Note") and the Loan Agreement ("2018 Bellwood Loan Agreement") are attached hereto as Exhibit 1.H.

23. On or about May 30, 2018, Carter Bank again renewed and extended a certain loan to JLSM. In connection with that renewal, JLSM and Jay Justice executed the following loan documents:

- a. JLSM Promissory Note;
- b. Guaranty (Jay Justice as guarantor); and
- c. JLSM Loan Agreement.

True copies of the foregoing loan documents ("May 30, 2018 Loan Documents") are attached hereto as Exhibit 1.I.

24. On or about December 1, 2018, Carter Bank renewed and extended its loan to JCJC and to restructure a loan to JLSM. In connection with these transactions, certain of the Justice Entities and the Justices executed the following loan documents:

- a. JCJC Amended and Restated Promissory Note;
- b. JCJC Loan Agreement;
- c. JLSM Amended and Restated Promissory Note; and
- d. JLSM Loan Agreement.

True copies of the foregoing loan documents ("December 1, 2018 Loan Documents") are attached as Exhibit 1.J.

25. On or about May 28, 2019, Carter Bank renewed and extended its loan to JLSM. In connection with that renewal, JLSM and Jay Justice executed the following loan documents:

- a. JLSM Amended and Restated Promissory Note;
- b. JLSM Loan Agreement; and
- c. Guaranty (Jay Justice as guarantor).

True copies of the foregoing loan documents ("December 1, 2018 Loan Documents") are attached as Exhibit 1.K.

26. On or about December 12, 2019, January 15, 2020, January 29, 2020 and March 19, 2020, Carter Bank renewed and extended its loan to JCJC. In connection with that renewal, JCJC executed Amended and Restated Promissory Notes. Copies of the JCJC Amended and Restated Promissory Notes ("December 12, 2019 JCJC Note", "January 15, 2020 JCJC Note", "January 29, 2020 JCJC Note" and March 19, 2020 JCJC Note") are attached as Exhibit 1.L.

27. Also in 2020, Carter Bank engaged in discussions with the Justices and the Justice Entities, concerning restructuring a large number of loans to the Justice Entities. On June 30,

2020, the parties restructured, renewed and redocumented many of the loans made by Carter Bank to the Justice Entities.

28. As part of that June 30, 2020 restructuring, the Justice Entities executed at least twenty-nine (29) separate loan agreements, security agreements, and amended and restated promissory notes and the Justices again executed personal guaranties (the "2020 Loan Documents"). True copies of the 2020 Loan Documents are attached hereto as Exhibit 1.M and identified with more particularity on the index attached hereto.

29. Once again the Justice Entities and the Justices were represented in the negotiations by their in-house attorney, Stephen W. Ball, Esq., who reviewed and negotiated the terms of the 2020 Loan Documents. At the time of the negotiation, drafting and execution of the 2020 Loan Documents, the Justices had replaced their outside counsel, Mr. Sullivan and were now represented by a new prominent outside counsel, William A. Burck, a partner with Quinn Emanuel Urquhart & Sullivan, LLP, one of the foremost law firms in the United States. Mr. Burck's law firm web page biography is attached hereto as Exhibit 3. His biography states that "William "Bill" Burck is Co-Managing Partner of the Washington, D.C. office of Quinn Emanuel Urquhart & Sullivan, LLP and Co-Chair of the firm's Crisis Law and Strategy Group, the Government and Regulatory Litigation Group, and the Investigations, Government Enforcement and White Collar Criminal Defense Group. Mr. Burck, who is a member of the Washington, D.C. and New York Bars, is also resident in the New York office. The New York Times has declared him the modern day "Washington superlawyer" in the model of Edward Bennett Williams, famously known as "the counsel to the situation." He is widely recognized as one of the country's top lawyers and has been named the "D.C. White Collar Crime & Government Investigations Lawyer of the Year" by Chambers USA, the world leader in lawyer rankings, which annually includes Mr. Burck in its #1

tier of white collar lawyers in Washington, D.C. He has been named for four consecutive years as a top five white collar defense lawyer in the U.S. by Law360. Benchmark Litigation has named Mr. Burck the "White Collar/Investigations/ Enforcement Lawyer of the Year," noting he is lauded by peers as "the best of the best" and one of the top trial lawyers in the United States." At the time of the negotiation and execution of the 2020 Loan Documents, the Justices and the Justice Entities were again superbly represented by highly sophisticated counsel.

30. On twelve (12) occasions, beginning in May 2017, the Justices and the Justice Entities executed, in connection with many of the above-described loans, restructurings and/or extensions, agreements (a) reaffirming the legality, validity and binding nature of the respective terms of their loan obligations to Carter Bank, (b) covenanting not to participate in any lawsuit adverse to Carter Bank relating to the Loan Documents and (c) unconditionally releasing Carter Bank from any and all claims they might have against it ("Reaffirmation and Release Agreements"). True copies of the twelve (12) Reaffirmation and Release Agreements are attached hereto as Exhibit 1.N.

31. Attorneys for the Justices and the Justice Entities – both inside and/or outside counsel – represented the Justices and the Justice Entities and were involved in negotiating the terms of the Reaffirmation and Release Agreements, including the most recent Reaffirmation and Release Agreement executed on June 30, 2020 in conjunction with the 2020 loan restructuring.

32. To the best of my knowledge and belief, Ball resides, is domiciled in and works in Roanoke, Virginia at the Justice Entities' headquarters. He is a material witness in this case.

33. To the best of my knowledge and belief, Mr. Sullivan is with the law firm Frost, Brown & Todd, LLC headquartered in Kentucky.

34. To the best of my knowledge and belief, Jay Justice resides, is domiciled in and works in Roanoke, Virginia. He is a material witness in this case and the Justice Entities' representative with whom Carter Bank had the most communication.

35. None of Carter Bank's Board of Directors resides or is domiciled in West Virginia. Most reside or are domiciled in the Western District of Virginia.

36. All of the loan documents (collectively "the Loan Documents") described in this Declaration and listed on the index attached as Exhibit 1 were drafted in Virginia, were delivered to Carter Bank in Virginia and are located at Carter Bank's headquarters in Martinsville, Virginia.

The foregoing declaration is true and accurate to the best of my information and belief.

July 9, 2021

DocuSigned by:
Litz H. Van Dyke
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Litz Van Dyke, CEO, Carter Bank & Trust